IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1165 of 1994
with
CRIMINAL APPEAL No 49 of 1995

HON'BLE MR.JUSTICE N.G.NANDI

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAKSINH IRAMSINH SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1165 of 1994
MS BANNA S DUTTA for Petitioner No. 1-2
MR AJ DESAI, APP for Respondent No. 1

2. Criminal Appeal No. 49 of 1995
MR NS DESAI for Petitioner No. 1
MR AJ DESAI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 10/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. These two appeals under section 374 of Criminal Procedure Code are filed by the original accused nos.1, 2, 3, 5 and 6 against the order of conviction and sentence dated 24th October 1994, passed by the learned Additional Sessions Judge, Panchmahals, Godhra, in Sessions Case No.174/93. Initially Kanaksingh Ramsingh Solanki - accused no.1 and Mahendrasingh Ramsingh Solanki - accused no.3, filed Criminal Appeal No.1165/94 through jail and the same was admitted. Thereafter they along with Indrasingh Ramsingh - accused no.2, Dipsingh Dilipsingh Pratapsingh-accused no.5 and Pratapsingh Ramsingh-accused no.6 filed Criminal Appeal No.45/95 through their advocate. Since the appeal No.1165/94 filed by Kanaksingh Ramsingh and Mahendrasingh Ramsingh Solanki had already been admitted, the Division Bench of this Court by its order dated 17.7.1997 dismissed the Criminal Appeal No.49/95 in so far as it was filed by Kanaksingh Ramsingh and Mahendrasingh Ramsingh Solanki, and admitted the same in so far as it was filed by Indrasing Ramsingh-accused no.2, Dipsing @ Dilipsingh Pratapsing-accused no.5 and Pratapsingh Ramsingh-accused no.6.

2. The learned Additional Sessions Judge had acquitted the original accused nos.4, 7, 8, 9, 10 and 11. Ramsingh, the original accused no.12 had died during the pendency of the trial. The State appeal against the acquittal order (Criminal Appeal No.102/95) came to be dismissed for default by order dated 23.4.1996. During the pendency of the present two appeals filed by original accused nos.1, 2, 3, 5 and 6, Pratapsingh Ramsingh-original accused no.6 died. By order dated 11.8.2003 Criminal Appeal No.49/1995 stood abated qua Pratapsingh Ramsingh. Hence we are concerned with the two appeals filed by original accused nos.1,2, 3, and 5.

3. The accused nos.1, 2, 3, 5 and 6 were convicted of the offences under sections 302, 307, 324, 323, read with 149, 147, 148, 342, 447, 504 & 506(2) of IPC. Each of them was sentenced to life imprisonment and to pay a fine of Rs.500/-, in default, RI for two months for the offence under section 302 read with section 149 of IPC. No separate sentence was awarded for the offences under sections 307, 324, 323 read with sections 149, 147, 148, 342, 447, 504 and 506(2) of IPC.

4. The prosecution case is to be found in the evidence of Narayan Panchabhai (PW2). The incident occurred at about 4.30 p.m. on 26.6.1993 in a field in village Vallabhpur. According to Narayan Pachabhai, his uncle Dhulabhai Ratnabhai had called him and his father at 8.30 in the morning to help him with sowing bajri in his field. He had also called Bhaijibhai Mathurbhai. They had gone to the field bearing survey no.3 with a plough. His uncle, aunt and Vakhatsingh had also come with a plough. At about 4.30 pm Kanaksingh Ramsingh-accused no.1, Mahendrasingh Ramsing-accused no.3, Indrasingh Ramsingh-accused no.2, Pratapsingh Ramsingh-accused no.6, Dipsing Pratapsingh-accused no.5, Ramsingh Amarsingh-accused no.12, Ilaben, wife of Kanaksingh-accused no.9, Motiben-accused no.11 and Sarjanben-accused no.10 had come there and they were giving abuses. Kanaksingh was armed with an axe and so was Mahendrasingh. Indrasingh was armed with a spear, Pratapsingh was armed with a spear, Dipsingh Pratapsingh was armed with a Gupti and others were armed with sticks. When he saw them from a distance, he climbed up a tree in the Neliya. They assaulted his father Panchabhai. Kanaksingh gave an axe blow on his head and therefore he fell down. Pratapsingh Ramsingh and Indrasingh Ramsingh also gave spear blows. All others were giving stick blows. Thereafter Kanaksingh gave an axe blow on the head of Dhulabhai Ratnabhai (PW6) and others gave stick blows to Dhulabhai Ratnabhai. Pratapsingh Ramsingh gave a stick blow on the head of Baijibhai Mathurbhai (PW4) and others beat him with stick. Dipsingh Pratapsingh gave a gupti blow on the head of Vakhatsingh Jasvantsingh (PW3). Others were beating him with sticks. Amarsingh and other women gave stick blows to his aunt Mongiben (PW5). Thereafter the accused bound his father Panchabhai and Baijibhai with a rope and they were dragged to the village. Narayan climbed down and went to the Sarpanch Ranchhodbhai Mangalbhai and told him about the incident. He went with the Sarpanch to Shahera police station to lodge a complaint. On the way they met the PSI who had come for investigation of a theft case. They told him about the incident. They went to the field where the incident had occurred. But there was no one there. Hence they went to the residence of Kanaksingh. His father was lying outside the house of Indrasingh and Bhaijibhai was lying in the Parsal of Kanaksingh's house. At the instance of PSI they arranged for a vehicle and they took his father and Bhaijibhai to Shahera. Vakhatsingh, who was injured, also was in the vehicle. The doctor examined them in the hospital. He declared Panchabhai dead. Other injured persons were admitted to the hospital at Shahera. Thereafter he went to the

police station and lodged his complaint.

5. Apart from Narayan, there were four other injured eye witnesses i.e. Vakhatsingh Jashwantsingh (PW3), Bhaijibhai Mathurbhai (PW4), Mongiben (PW5) and Dhulabhai Ratnabhai (PW6). They all suffered injuries in the incident and their evidence is corroborated by the evidence of Dr. Jayesh Bhavsar (Exh.22) who had examined them and issued certificates (Exhs.23, 24, 25 and 26).

6. We have been taken through the entire evidence of Narayan Panchabhai and the four eye witnesses. They all have given more or less the same version of the incident. According to Narayan Panchabhai (PW2), Kanaksingh-accused no.1 gave an axe blow to the deceased and also a blow to Dhulabhai (PW6). Indrasingh Ramsingh gave a spear blow to the deceased. Mahendrasingh was armed with an axe. Dipsingh Pratapsingh was armed with a gupti and gave a blow to Vakhatsingh. Pratapsingh Ramsingh gave a spear blow to the deceased and a blow to Bhaijibhai.

6.1 According to Vakhatsingh Jashwantsingh (PW3), Kanaksingh gave an axe blow to the deceased and an axe blow to Dhulabhai (PW6). Indrasingh Ramsingh was armed with a spear and Mahendrasingh gave an axe blow to Bhaijibhai (PW4). Dipsingh Pratapsingh gave a gupti blow to him and Pratapsingh Ramsingh gave a spear blow to the deceased Panchabhai.

6.2 According to Bhaijibhai Mathurbhai (PW4), Kanaksingh gave an axe blow to the deceased and an axe blow to Dhulabhai (PW6). Indrasingh Ramsingh was armed with a spear and Mahendrasingh was armed with an axe. Dipsingh Pratapsingh gave a gupti blow to Vakhatsingh and Pratapsingh gave a spear blow to him.

6.3 According to Mongiben (PW5), Kanaksingh gave an axe blow to the deceased and an axe blow to Dhulabhai, Indrasingh gave a spear blow to the deceased, Mahendrasingh was armed with a spear, Dipsingh gave a gupti blow to her and Pratapsingh gave a spear blow to the deceased.

6.4 According to Dhulabhai (PW6), Kanaksingh gave an axe blow to him and an axe blow to the deceased. Mahendrasingh was armed with an axe and Dipsingh Pratapsingh gave a gupti blow to Mongiben and to Vakhatsingh.

Naturally when the same incident is being described by different witnesses there is bound to be some difference

as to the nature of weapon said to have been wielded by different accused and the blows given by them. But that by itself is no reason to discard their evidence. There is no doubt that the deceased Panchabhai and the four injured witnesses were attacked by the appellants and received injuries at their hands.

7. It appears that there was a long standing dispute about the field between Dhulabhai (PW6) and Ramsingh, the father of the accused. The defence has produced copies of orders passed in the litigation to show that there was a dispute and the Civil Court had passed an order in their favour. However, it appears that the Special Secretary, Revenue Department had passed an order in favour of Dhulabhai Ratnabhai.Dhulabhai admitted in his cross-examination that Ramsingh had filed a petition against him in the High Court and he had obtained a stay order.The learned counsel for the appellants, therefore, submitted that the accused were exercising their right of private defence of property. However, the accused not only caused injuries to Panchabhai and four other persons, but they tied Panchabhai and Bhaijibhai with a rope and dragged them to the village and Panchabhai succumbed to the injuries. Thus, their entire act cannot be said to be an act of exercise of right of private defence of property.

8. It was then contended that in view of the medical evidence, it cannot be said that the accused had committed offence under section 302 of IPC. To appreciate this contention, it is necessary to turn to the evidence of Dr. Jayesh Bhavsar (PW1). He was Medical Officer in Civil Hospital at Godhra. He carried out the postmortem on the dead body of Panchabhai on 7.6.1993. He found the following external injuries ont he dead body:

1. CLW over frontal region - V shaped - 5 cm x 5 cm.

2. CLW over left frontal parietal region - 3 cm x 0.5cm.

3. V shaped CLW over parietal eminence.

4. Black slightly depressed patch of skin over left forehead.

5. Black patch over skin of right shoulder joint.

6. Black patch over middle part of right arm laterally.

7. Depression on the right arm.

8. Blackish patch of skin on the left shoulder joint.

9. CLW over left forearm.

10. CLW over left leg.

11. CLW on posterior side of left leg.

There was no fracture of the skull. The brain was normal and there was no hemorrhage. The heart was also normal and there was no injury. The major blood vessels were also normal. Peritoneum, Oesophagus and stomach were also normal. Liver and pancreas were also normal and so was the spleen. According to Dr. Jayesh Bhavsar, the cause of death was shock due to injuries. In cross-examination he said that there was no fracture corresponding to external injury nos.1 to 4 and none of them was sufficient to cause death. He said that since there were head injuries, death can result because of shock following injury to nervous system. But on internal examination no injury to the nervous system was found. He said that the head injuries were simple. Injury Nos.5 and 6 were simple injuries. Injury no.7 was fracture of the arm but there was no injury to any vital part. It was not capable of causing death. Injury nos.8 to 11 were also simple injuries and none of them was sufficient by itself to cause death. Fracture of the sternum was not such as would cause injury to heart, lung, liver or spleen. Such fracture would be treatable. That injury was not sufficient to cause death. Then the doctor said that if the injured person is angry, then there may be shock and he will not be able to bear the same. He said that if there is hemorrhage because of injuries, it may result in shock, but in the present case, looking to the injuries, the same were not such as would result in death following hemorrhage. Lastly he said that there was a possibility of the deceased going into shock because of his physical weakness.

9. Thus, the medical evidence shows that most of the injuries were simple in nature. There were two fractures, but there was no injury to any vital organ. There was no hemorrhage which would result in shock and cause death. The doctor has also not specifically said that the injuries were sufficient to cause death in the ordinary course of nature. Hence in the circumstances, it cannot be said that the accused would be guilty of the

offence under section 302. In our opinion, they would be guilty of the offence under section 304 Part II.

10. Learned counsel for the appellants submitted that the charge against the accused was 302 read with section 34 and hence they could not have been convicted with the aid of section 149. However, there was also a specific charge under section 149. As many as six persons (five appellants and Ramsingh - original accused no.12 who died while the trial was pending) took part in the incident and under the circumstances they formed an unlawful assembly and they will be liable as such. The learned Additional Sessions Judge has also convicted the appellants of the offence under section 307. However,the injuries caused to the four eye witnesses are not such as would endanger human life and it cannot be said that the accused would be guilty of the offence of attempting to commit murder. But there is no reason to interfere with the conviction under section 324, 323 and other sections recorded by the learned Additional Sessions Judge.

11. The result is that the Criminal Appeal No.1165/94 filed by Kanaksingh Ramsingh Solanki-accused no.1 and Mahendrasingh @ Narsingh Ramsingh Solanki-accused no.3, and Criminal Appeal No.49/95 filed by Indrasinh Ramsing Solanki-accused no.2 and Dipsingh @ Dilipsingh Pratapsingh Solanki - accused no.5 are partly allowed. Their conviction under section 302 read with section 149 of IPC is set aside and they are convicted of the offence under section 304, Part II read with section 149 of IPC, and each of them is sentenced to suffer R.I. for six years and to pay fine of Rs.500/-, in default, further R.I. for two months. Their conviction under section 307 read with section 149 is set aside. Their conviction for the rest of the offences as recorded by the learned Additional Sessions Judge is confirmed.

[N.G. NANDI, J.]

[M.C. PATEL, J.]

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